

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

EPIC GAMES, INC.,

Plaintiff,

vs.

APPLE INC.,

Defendant.

AND RELATED COUNTERCLAIM

Case No. 4:20-cv-05640-YGR

**TRIAL ORDER NO. 4 RE:
(1) ADMINISTRATIVE MOTIONS TO SEAL;
AND (2) PARTIAL RULING ON EXPERT
OBJECTIONS**

Re: Dkt. Nos. 489, 509, 518, 520

TO ALL PARTIES AND COUNSEL OF RECORD:

The Court issues this Order with respect to several items on the docket:

1. Administrative Motions to Seal Expert Written Direct Examination

The Court is in receipt of various motions to seal portions of the parties' expert written direct examinations. Having carefully considered the parties' arguments, supporting declarations, and declarations filed by third parties, the Court finds as follows:¹

Expert Written Direct Paragraph or Footnote Number	Affected Party	Ruling
Epic Games' Motion to Seal (Dkt. No. 509)²		
Evans Opening 43	IDC	DENY. IDC files no supporting declaration to justify sealing.
Evans Opening FN3	Apple, IDC	DENY. IDC files no supporting

¹ As with the prior motions to seal, if the Court chooses to unseal material for use at trial, it will give the parties a chance to respond. Where this Order seals a cited exhibit, the sealing shall apply to the underlying exhibit, not the citation.

² The Court addressed sealing of the written direct examination of Epic Games' expert Mr. Barnes in an earlier order. (*See* Dkt. No. 548.)

		declaration to justify sealing. Apple does not seek to seal.
Evans Opening 51	Samsung	DENY. Samsung files no supporting declaration. <i>See</i> Civ. L. R. 79-5(e)(2).
Evans Opening FN5	Samsung	DENY. Samsung files no supporting declaration. <i>See</i> Civ. L. R. 79-5(e)(2).
Evans Opening 53	App Annie	DENY. App Annie files no supporting declaration. <i>See</i> Civ. L. R. 79-5(e)(2). ³
Evans Opening 74	IDC	DENY. IDC files no supporting declaration. <i>See</i> Civ. L. R. 79-5(e)(2).
Evans Opening 79	IDC	DENY. IDC files no supporting declaration. <i>See</i> Civ. L. R. 79-5(e)(2).
Evans Opening 80	App Annie	DENY. App Annie files no supporting declaration. <i>See</i> Civ. L. R. 79-5(e)(2).
Evans Opening 81	IDC	DENY. IDC files no supporting declaration. <i>See</i> Civ. L. R. 79-5(e)(2).
Evans Opening 88	Google	GRANT to the extent shown in Dkt. No. 535-1. This contains Google's confidential business information, including internal surveys and analysis, which competitively harm Google through disclosure. (Dkt. No. 535 ¶ 7.) Google only requests sealing specific numbers based on its survey data, which makes the request narrowly tailored.
Evans Opening FN27	Google	DENY. Google does not seek to seal.
Evans Opening 107	Microsoft	DENY. Microsoft does not seek to seal.
Evans Opening 141	Apple	DENY. This reveals no confidential information.
Evans Opening 149	Apple	GRANT. This contains Apple's confidential financial information. (<i>See</i> Dkt. No. 540 ¶ 18.)
Evans Opening FN46	Apple	DENY. This concerns Mr. Barnes' analysis of Apple's profitability,

³ App Annie had earlier filed a motion to seal certain exhibits, but did not seek to seal the expert written direct examinations then pending.

		not Apple's internal data. The Court has already unsealed this data. (See Dkt. No. 548.)
Evans Opening Table 3	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
Evans Opening 153	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
Evans Opening FN47	Apple	DENY. This reveals no confidential information.
Evans Opening FN48	Apple	DENY. This reveals no confidential information.
Evans Opening FN49	Apple	DENY. This reveals no confidential information.
Evans Opening FN50	Apple	DENY. This reveals no confidential information.
Evans Opening Figure 2	Apple	GRANT as to number. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
Evans Opening 154	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
Evans Opening FN51	Apple	DENY. This reveals no confidential information.
Evans Opening FN52	Apple	DENY. This reveals no confidential information.
Evans Opening 172	Valve	GRANT. This contains Valve's confidential business information. (See Dkt. No. 569 ¶ 10.)
Evans Opening 173	Valve	DENY. This reveals no confidential information.
Evans Opening FN65	Valve	DENY. This reveals no confidential information.
Evans Opening 177	Microsoft, Valve	GRANT. This contains Valve's confidential business information. (See Dkt. No. 569 ¶ 11.) Microsoft does not seek to seal.
Evans Opening 182	Apple	GRANT as to last sentence only. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
Evans Opening 183	Apple	DENY. This reveals no confidential information.
Evans Opening 184	Apple	DENY. This reveals no confidential information.
Evans Opening FN74	Apple	DENY. This reveals no

		confidential information.
Evans Opening Figure 3	Apple	DENY. This contains primarily historical confidential information that does not outweigh its relevance to the case.
Evans Opening 188	Apple	DENY. This contains primarily historical confidential information that does not outweigh its relevance to the case.
Evans Opening Table 7	Apple	DENY. This contains primarily historical confidential information that does not outweigh its relevance to the case.
Evans Opening 189	Apple	DENY. This contains primarily historical confidential information that does not outweigh its relevance to the case.
Evans Opening FN77	Apple	DENY. This reveals no confidential information.
Evans Opening Figure 4	Apple	DENY. This reveals no confidential information.
Evans Opening FN105	Apple	GRANT. This contains Apple's confidential technical information. (See Dkt. No. 540 ¶ 18.)
Evans Opening 229	Apple	DENY. This reveals no confidential information.
Evans Opening Figure 5	Apple	GRANT. This contains Apple's confidential technical information that could be used to evade security protocols if disclosed. (See Dkt. No. 540 ¶ 18.)
Evans Opening FN108	Apple	DENY. This reveals no confidential information.
Evans Opening 241	Match	GRANT. This contains Match's confidential business information that could cause competitive harm to Match. (See Dkt. No. 570 ¶ 5.)
Evans Opening 242	Microsoft	DENY. Microsoft does not seek to seal.
Evans Opening 270(i)	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
Evans Opening Table 8	Apple, App Annie	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
Evans Opening 288	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)

1	Evans Opening 295	Apple	DENY. This reveals no confidential information.
2	Evans Opening FN126	Apple	GRANT as to number only. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
3	Rossi Opening 49	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
4	Cragg Rebuttal 9	Spotify	GRANT as to bullet 3 after "Moreover." This discloses Spotify's confidential business information and could harm Spotify in negotiations with content owners and distributors. (Dkt. No. 575 ¶ 7.)
5	Cragg Rebuttal 56	Apple	GRANT. This contains Apple's confidential business information. (See Dkt. No. 540 ¶ 18.)
6	Cragg Rebuttal Figure 4	Apple	GRANT. This contains Apple's confidential business information. (See Dkt. No. 540 ¶ 18.)
7	Cragg Rebuttal 57	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
8	Cragg Rebuttal 65	Spotify	DENY. Spotify does not seek to seal.
9	Cragg Rebuttal 69	Spotify	DENY. Spotify does not seek to seal.
10	Cragg Rebuttal 70	Spotify	GRANT as to clause beginning with "which it estimates." This discloses Spotify's confidential marketing spending data that could harm Spotify competitively by informing competitors' business decisions. (Dkt. No. 575 ¶ 14.)
11	Cragg Rebuttal Figure 8	Spotify	GRANT. This discloses Spotify's confidential business data that could harm Spotify competitively if disclosed. (Dkt. No. 575 ¶ 15.) The relevant portion of the information is already disclosed in the paragraphs 70 and 71.
12	Cragg Rebuttal 71	Spotify	GRANT. This discloses Spotify's confidential business data that could harm Spotify competitively if disclosed. (Dkt. No. 575 ¶ 15.)
13	Cragg Rebuttal FN10	Spotify	DENY. Spotify does not seek to seal.

1	Cragg Rebuttal 94	Apple	DENY. This reveals no confidential information.
2	Cragg Rebuttal Figure 18	Apple	GRANT. This contains Apple's confidential business information. (See Dkt. No. 540 ¶ 18.)
3	Cragg Rebuttal 95	Apple, App Annie	DENY. This reveals no confidential information. App Annie files no supporting declaration.
4	Cragg Rebuttal Figure 19	App Annie	DENY. App Annie files no supporting declaration. See Civ. L. R. 79-5(e)(2).
5	Cragg Rebuttal 99	Apple	DENY. This reveals no confidential information.
6	Cragg Rebuttal Figure 21	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
7	Cragg Rebuttal 100	Apple	GRANT as to numerical reference only. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
8	Cragg Rebuttal Figure 22	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
9	Cragg Rebuttal 102	Apple	GRANT as to phrase beginning with "as of 2019" only. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
10	Cragg Rebuttal Figure 23	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
11	Cragg Rebuttal 103	Apple	DENY. Dr. Hitt discloses the same type of analysis and data.
12	Cragg Rebuttal Figure 24	Apple	DENY. Dr. Hitt discloses the same type of analysis and data.
13	Cragg Rebuttal 105	Apple	DENY. Dr. Hitt discloses the same type of analysis and data.
14	Cragg Rebuttal Figure 25	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
15	Evans Rebuttal Table of Contents	Apple	DENY. This reveals no confidential information.
16	Evans Rebuttal 2	Apple	DENY. This reveals no confidential information.
17	Evans Rebuttal FN11	Samsung	DENY. Samsung files no supporting declaration. See Civ. L. R. 79-5(e)(2).

1	Evans Rebuttal 34	Apple, Google	DENY. This contains no confidential information that outweighs the public interest in disclosure.
2	Evans Rebuttal FN34	Google	DENY. This contains no confidential information that outweighs the public interest in disclosure.
3	Evans Rebuttal FN 38	Apple	DENY. This reveals no confidential information.
4	Evans Rebuttal 36	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
5	Evans Rebuttal 40	Apple	DENY. This reveals no confidential information. The mere existence of P&L statements is not confidential.
6	Evans Rebuttal 42	Apple	DENY. This information is general and highly relevant to the claims.
7	Evans Rebuttal 43	Apple	DENY. The existence of P&L statements and other profit calculations are not sealable.
8	Evans Rebuttal 44	Apple	GRANT as to numerical reference only. This contains Apple's confidential financial information that can be referred to generally. (See Dkt. No. 540 ¶ 18.)
9	Evans Rebuttal 45	Apple	GRANT as to sentence beginning with "Apple's internal profitability benchmarking analysis shows, as well as the sentence following. This contains Apple's confidential financial information that can be referred to generally. (See Dkt. No. 540 ¶ 18.)
10	Evans Rebuttal FN50	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
11	Evans Rebuttal FN52	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
12	Evans Rebuttal FN54	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
13	Evans Rebuttal 46	Apple	DENY. This reveals no confidential information.
14	Evans Rebuttal 47	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)

1	Evans Rebuttal 49	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
2			
3	Evans Rebuttal FN58	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
4			
5	Evans Rebuttal FN59	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
6			
7	Evans Rebuttal 52	Valve	DENY. Valve does not seek to seal.
8	Evans Rebuttal FN65	Valve	DENY. Valve does not seek to seal.
9	Evans Rebuttal 64	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
10			
11	Evans Rebuttal 71	Apple	GRANT as to the clause after the colon only. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.)
12			
13	Evans Rebuttal 74	Apple	DENY. This information has already been disclosed by Barnes.
14	Lee Rebuttal 35	Apple	DENY. This reveals no confidential information.
15	Lee Rebuttal FN18	Apple	DENY. This reveals no confidential information.
16	Lee Rebuttal 63	Apple	DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.)
17	Lee Rebuttal FN30	Apple	DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.)
18	Lee Rebuttal 67	Apple	DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.)
19	Lee Rebuttal 68	Apple	DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.)
20	Lee Rebuttal FN37	Apple	DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.)
21	Lee Rebuttal FN38	Apple	DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.)
22	Lee Rebuttal FN39	Apple	DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.)
23	Lee Rebuttal 99	Apple	DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.)
24	Lee Rebuttal FN76	Apple	DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.)
25	Lee Rebuttal 119	Apple	DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.)
26	Lee Rebuttal FN89	Apple	DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.)
27			
28			

1	Mathiowetz Rebuttal 12	Apple	DENY. This reveals no confidential information.
2	Mathiowetz Rebuttal 70	Apple	GRANT. This contains Apple's confidential business information. (See Dkt. No. 540 ¶ 18.)
3	Mathiowetz Rebuttal 71	Apple	DENY. This reveals no confidential information.
4	Apple's Motion to Seal (Dkt. No. 489)		
5	Hitt 61	Apple	DENY. This concerns a third-party's study of the gaming industry.
6	Hitt 117	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 489-1 ¶ 8.)
7	Hitt 184	Google	GRANT as to the number shown at the end of the paragraph. This discloses Google's confidential financial data that could harm Google competitively if disclosed. (Dkt. No. 535 ¶ 8.)
8	Hitt Figure 46	Google	GRANT. This discloses Google's confidential financial data that could harm Google if disclosed. (Dkt. No. 535 ¶ 8.)
9	Hitt 187	Apple	GRANT. This contains Apple's confidential financial information. (See Dkt. No. 489-1 ¶ 8.)
10	Hitt 209-11	Google	GRANT as to the numbers cited in Dkt. No. 535-2. This discloses Google's confidential internal analyses. (Dkt. No. 535 ¶ 8.) While highly relevant, the specific numbers are not necessary to understand the analysis.
11	Hitt 213	Google	DENY. This information is highly relevant to the case and Google does not articulate concrete competitive harm from disclosure.
12	Hitt 260	Nintendo	DENY. This contains no confidential information as to Nintendo.
13	Hitt Figure 4	Microsoft, Nintendo	GRANT. This discloses Microsoft's confidential business data. (Dkt. No. 567.) The Court granted to seal the underlying agreement.
14	Hitt Figure 5	Roblox	GRANT. This discloses Roblox's confidential business data. (Dkt. No. 573.) The Court granted to seal the underlying agreement.

Hitt Figure 22	Apple, Spotify	GRANT. This reveals Spotify's confidential financial information the disclosure of which could disadvantage Spotify in negotiations, such as with advertisers. (Dkt. No. 575 ¶ 9.) The relevant aspect of the information is disclosed in paragraph 102, which reduces the public's need to know the specific numbers.
Hitt Figure 23	Spotify	GRANT. This reveals Spotify's confidential business information the disclosure of which could disadvantage Spotify in negotiations, such as with advertisers. (Dkt. No. 575 ¶ 11.) The relevant aspect of the information is disclosed in paragraph 102, which reduces the public's need to know the specific numbers.
Hitt Figure 24	Spotify	GRANT. This reveals Spotify's confidential financial information the disclosure of which could disadvantage Spotify in negotiations, such as with advertisers. (Dkt. No. 575 ¶ 9.) The relevant aspect of the information is disclosed in paragraph 103, which reduces the public's need to know the specific numbers.
Hitt Figure 25	Spotify	GRANT. This reveals Spotify's confidential financial information the disclosure of which could disadvantage Spotify in negotiations, such as with advertisers. (Dkt. No. 575 ¶ 12.) The relevant aspect of the information is disclosed in paragraph 104, which reduces the public's need to know the specific numbers.
Hitt Figure 27	Apple	DENY. This reveals no confidential information.
Hitt Figure 47	Apple	GRANT. This contains Apple's confidential business information. (See Dkt. No. 489-1 ¶ 10.)

Schmalensee 95	Apple	DENY. This refers to Dr. Evans' hypothetical analysis of Apple's profits and does not disclose any confidential information.
Schmalensee 170	Apple	GRANT. This contains Apple's confidential business information. (See Dkt. No. 489-1 ¶ 8.)
LaFontaine 100	Google	GRANT. as shown in Dkt. No. 535-3. This concerns Google's confidential internal analyses data analysis. (Dkt. No. 535 ¶ 9.)
Rubin 57	Google	GRANT as to the first two sentences and the last sentence only. This concerns Google's internal review process and app store security statistics. While highly relevant to the present case as providing comparison with a key competitor, Google is a third-party whose conduct is not at issue in this case. Disclosure of the information could allow malicious actors to exploit security risks in Google's process and thus cause substantial harm. (Dkt. No. 535 ¶ 10.)

Written testimony of each expert shall not post until the witness takes the stand. Before posting the written testimony, the parties shall provide to the Court a highlighted version of the redactions. The parties shall meet and confer regarding the timing of the exchange.

2. Objections to Written Direct Testimony

The Court is further in receipt of several objections to the expert written direct testimony. (Dkt. Nos. 518, 520.) Apple's objections to Dr. Athey are **OVERRULED** as the testimony does not constitute additional opinions. Apple's objections to Prof. Mickens are **OVERRULED** as being overly technical and harmless. Apple's objections to Dr. Evans are **OVERRULED** as to paragraphs 48-50 and **SUSTAINED** as to paragraph 39. That testimony shall be struck from the written direct examination. Apple's objections to Dr. Cragg are **SUSTAINED** as to the "coefficients" discussion in paragraph 26 and **OVERRULED** as to the rest.

//

1 The Court shall address the remaining objections in a separate order.

2 This Order terminates docket numbers 489 and 509.

3 **IT IS SO ORDERED.**

4
5 Dated: May 9, 2021



6 **YVONNE GONZALEZ ROGERS**
7 **UNITED STATES DISTRICT JUDGE**